

IX.—REWARDS.

1. Rule 56 of the rules under the Opium Act leaves it to the discretion of the Magistrate whether he will grant a reward or not in cases of opium-smuggling, but it seems expedient that rewards should be freely granted to stimulate the zeal of the preventive men. (G. R. No. 3473, dated 2nd July 1879.)

2. In the interests of the public revenue it is desirable that rewards in cases of opium-smuggling should always be granted when fairly earned. (G. R. No. 273, dated 16th January 1882.)

3. The attention of the Magistrates in this Presidency is requested to the fact that a liberal treatment of informers in opium-smuggling cases is likely to be of much use in checking defeat of the law. (G. R. No. 2281, dated 14th April 1888, and G. R., J. D., No. 2255, dated 28th idem.)

4. Whenever informers in opium-smuggling cases refuse to pass a receipt for the reward disbursed to them, the payment should be admitted on the production of a receipt signed by the disbursing officer and countersigned by the controlling officer and subject to the condition that the gazetted officer to whom the disbursing officer is immediately subordinate should certify on the receipt that he has satisfied himself that payment has been made to the rightful claimant. (G. R. No. 3698, dated 29th May 1890.)

5. The rules under the Opium Act do not authorize the handing of rewards for the detection of opium-smuggling to the Traffic Manager of a Railway for distribution, as he is not a head of a Department in the sense of the rule. The rewards to be given to employes of the G. I. P. Railway may, as desired by the authorities of the Railway, be limited to one month's pay in ordinary cases. The Superintendent of Police is responsible that petty annoyance is not caused to third class passengers by constables under the pretence of a search for opium. Government have no reason to suppose that this abuse of authority exists, but it must be guarded against. (G. R. No. 7394, dated 29th October 1887.)

X.—INTERPRETATIONS, LEGAL OPINIONS, &c.

1. No restriction is placed by the Opium Rules on the free transport and sale of poppy seeds. (G. R. No. 756, dated 14th February 1880.)

2. Section 3 of the Opium Act, 1878, provides that, unless there be something repugnant in the subject or context, 'opium' includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy.

In the rules* made under Section 5 of the Act, 'opium' has the meaning defined in the Act.

In the Rules Nos. 39, 40, 43 and 44, 'opium' and 'intoxicating drugs prepared from the poppy' are distinguished; and licenses may be allowed for the retail of opium and for the manufacture or retail of intoxicating drugs prepared from the poppy.

It is obvious that in these rules the word 'opium' does not include 'intoxicating drugs prepared from the poppy,' and that a license granted under these rules for the retail of opium does not include the manufacture or retail of any intoxicating drugs prepared from the poppy.

In the same way in Rule 22, where the manufacture of opium into 'chandul' is allowed, it is clear that the word 'opium' does not in this instance include 'chandul.' (L. R. No. 1537, dated 28th November 1882; *vide* G. R. No. 8728, dated 12th December 1882.)

3. The Opium Act contemplates the powers under Section 14 thereof being vested in real officers of the opium and other Departments, and it would be a straining of the meaning of the law to make certain persons (such as the opium farmer and his detectives) officers with no duties and no powers other than those under that section. (L. R. No. 567, dated 30th April 1883; *vide* G. R. No. 3698, dated 14th May 1883.)

4. Mamlatdars are authorized to act under Section 24 of the Opium Act by Judicial Department Notification No. 3578, dated 20th June 1879. An appeal lies under Section 203. of the Land Revenue Code to the Commissioner of the Division and not to the Commissioner of Opium against an order passed by a Collector on appeal from an order passed by a Mamlatdar under Section 24 of the Opium Act. (L. R. No. 149, dated 28th January 1885; *vide* G. R. No. 1108, dated 6th February 1885.)

5. A farmer of opium revenue cannot obtain the assistance of a Revenue officer to recover from his licensee's surety any sum which may be due to him by his licensee.

By Section 24 of Act I of 1878 an opium farmer may obtain the assistance of the Collector or other authorized officer to recover the amount due to him by his licensee, and such officer may in his discretion recover such amount as if it were an arrear of land revenue. In this section no allusion is made to the licensee's surety, although in the previous section the opium farmer's own surety is distinctly mentioned as liable.

The inference from Sections 23 and 24 of this Act appears to be that though the farmer's surety is liable, the licensee's surety is not liable to summary process.

Turning to Section 187 of the Land Revenue Code it is there provided that all persons who have become sureties for any such contractor as aforesaid, *i. e.*, contractor for the farm, of any description of revenue, shall on failure to pay the amount or any

portion thereof for which they have become liable under the terms of their security bond, be liable to be proceeded against under the provisions of this chapter as revenue defaulters. Here the contractor's surety is made liable, and the interests of the revenue are thereby protected; but the provision cannot be extended beyond the terms of the section, and there is nothing in the section to warrant its application to the surety of the contractor's licensee. As regards him, therefore, the contractor must be left to find the ordinary remedy by means of the Civil Court. (L. R. No. 753, dated 23rd June 1885; *vide* G. R. No. 5669, dated 14th July 1885.)

6. The following judgment was passed by the High Court of Bombay in the case of *Imperatrix vs. Pirsha Bachalsha*, Appeal No. 98 of 1885:—

"The accused was convicted by the First Class Magistrate under Section 9 (c) of the Opium Act (I of 1878) of the offence of possessing opium in contravention of the Act and of the rules made under it. The Sessions Judge has reversed that conviction. But it appears that *chandul*, a preparation of opium, was found in the possession of the accused. Section 10 of the Act provides that 'in prosecutions under Section 9 it shall be presumed, until the contrary is proved, that all opium for which the accused is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.' The accused in this case has not accounted for his possession at all. Therefore the Magistrate was right in convicting him, and the Sessions Judge ought not to have reversed that conviction. The Government Pleader in the Court below seems not to have been properly instructed and the Sessions Judge was not shown any rules on the subject made by Government. But the Government Pleader here has produced to us such rules (Revenue Department, Bombay Castle, 29th September 1883, and No. 7287). Rule 3,* which prohibits the possession of any opium unless obtained as therein specified, seems to us to apply, and we direct the Sessions Judge's attention to it.

"We reverse the Sessions Judge's order of acquittal and restore the Magistrate's conviction and sentence."

(G. R. No. 7499, dated 16th September 1885.)

7. The term "Medical practitioner" is used in Rule 37 of the Rules† under the Opium Act in its general sense, without any qualification. As so used, it means a person who practises or is engaged in the exercise of the medical profession, *i. e.* the healing of diseases. It therefore undoubtedly includes practising vaidyas and hakims, but it does not include persons who are vaidyas and hakims in name only. (L. R. No. 4, dated 4th January 1892; *vide* G. R. No. 6292, dated 3rd August 1892.)

XI:—MISCELLANEOUS.

1. *Official Correspondence*.—All correspondence relating to the Opium and Salt Departments which

* *Vide* Rule 4 of the Rules in G. N. No. 4472 A, dated 3rd June 1885, printed at pp. 397—417 of the Compilation of General Rules.